

Amendment and Response
Serial No.: 09/888,732
Confirmation No.: 2092
Filed: 25 June 2001
For: RESPIRATOR VALVE

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Remarks

The Office Action mailed 8 April 2003 has been received and reviewed. Claims 1, 7, 18, 34, and 38 having been amended, claims 6 and 22-33 having been cancelled, and new claims 43-56 being presented, the pending claims are claims 1, 3, 7-11, 13-21, and 34-56.

Claims 1, 18, 34, and 38 were amended to more precisely define Applicants' invention. Support for the amendment to claim 1 and 18 is found in the specification at page 6, lines 21-26 and Figure 3 and in claim 6 as originally filed. Support for the amendment to claims 34 and 38 is found in Figure 5.

Claim 7 was amended to depend from claim 1.

New claims 43-56 are presented for more comprehensive protection of the invention. Support for independent claims 43 & 50 can be found in the application as filed at, e.g., page 5, line 31 to page 6, line 2 and at page 11, lines 8-30, and throughout the figures.

No new matter has been added as a result of the above amendments.

Reconsideration and withdrawal of the rejections in view of the above amendments and the following comments are respectfully requested.

Obviousness-Type Double Patenting Rejection

Claims 1, 3, 6-11, and 13-42 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent Application No. 09/888,943 and Dragerwerk (German Patent No. 1 213 249).

Upon an indication of otherwise allowable subject matter and in the event this rejection is maintained, Applicants will provide an appropriate response.

The 35 U.S.C. §102 Rejection

The Examiner rejected claims 1, 4, 6-11, 15-18, 20-23, 25-28, 31-39, and 41-42 under 35 U.S.C. §102(b) as being anticipated by Dragerwerk (German Patent No. 1 213 249). Applicants respectfully traverse this rejection. Further, Applicants submit that claims 6, 22, 23,

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25-28, and 31-33 having been cancelled, the rejection as to these claims is thereby rendered moot. Additionally, Applicants draw to the Examiner's attention the fact that claim 4 was cancelled in the Amendment and Response filed January 28, 2003, thus rendering the Examiner's rejection of claim 4 moot.

For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference (M.P.E.P. § 2131). Applicants respectfully assert that Dragerwerk fails to teach each and every element of claims 1, 7-11, 15-18, 20, 21, 34-39, and 41-42, as amended herein.

Claims 1 and 18, as amended, recite a unidirectional valve and a respirator having a unidirectional valve including a valve flap that includes "a top surface and at least one rib extending from the top surface of the valve flap, and further wherein the valve flap thickness of a base part of the valve flap outside of the at least one rib decreases when moving from the first end to the second end or from the second end to the first end." Applicants respectfully assert that Dragerwerk fails to teach such a valve flap. As is clearly indicated in the figures of Dragerwerk, particularly in Figures 5-7, the valve flap thickness does not decrease when moving either from the first end to the second end or from the second end to the first end, as recited in claims 1 and 18.

Further, Applicants note that Dragerwerk does not teach a valve flap with "a curvature that causes a bias of the valve flap toward the valve seat" as recited in claim 9, nor does Dragerwerk teach the features recited in claims 10 and 11. These claims were not specifically addressed in the Office Action.

Claims 34 and 38, as amended, recite a unidirectional valve and a respirator having a unidirectional valve including a valve flap having a top surface and at least one rib extending from the top surface, wherein the rib is in continuous contact with the top surface of the valve flap. Dragerwerk, conversely, teach a valve with a rib "created to resemble a bridge 3 in the area of the bending axis, which means, it is not in connection with the valve closing body 1 in the area of the bending axis C-C." (Dragerwerk, translation, page 3, paragraph 2, lines 2-4).

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Applicants respectfully assert that Dragerwerk fails to teach the valve flap with at least one rib as recited in Applicants' claims 34 and 38, and claims 35-37, 39, and 41-42 dependent thereto.

It is respectfully asserted that claims 1, 7-11, 15-18, 20, 21, 34-39, and 41-42, as amended herein, are novel in view of Dragerwerk. Reconsideration and withdrawal of the rejection is respectfully requested.

The 35 U.S.C. §103 Rejection

The Examiner rejected claims 3, 14, 19, 24, 30, and 40 under 35 U.S.C. § 103(a) as being unpatentable over Dragerwerk (German Patent No. 1 213 249).

The Examiner rejected claims 13-14, 19, 29-30, and 40 under 35 U.S.C. § 103(a) as being unpatentable over Dragerwerk (German Patent No. 1 213 249) in view of Braun (U.S. Patent No. 4, 934,362).

Applicants respectfully traverse these rejections. Additionally, Applicants respectfully assert that the cancellation of claims 24, 29, and 30 renders the rejections as to these claims moot.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation in the references themselves or the knowledge generally available to one skilled in the art to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations (M.P.E.P. §2143).

In consideration of the above comments, Applicants respectfully assert that Dragerwerk fails to teach all the elements of independent claims 1, 18, and 38. It is further asserted that claims 3, 14, 19, and 40, dependent upon claims 1, 18, and 38 are not *prima facie* obvious, as Dragerwerk neither teaches every element of the claims nor provides motivation to modify its teachings to provide the claims. There is no motivation to provide a valve flap wherein the valve flap thickness decreases when moving from the first end to the second end or from the second end to the first end (claims 1 and 18), as the rib structure of Dragerwerk is

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clearly indicated in the text and figures, with no suggestion of the advantage of a valve flap as recited in claims 1 and 18. Additionally, there is no motivation to provide a valve flap having ribs in continuous contact with the top surface of the valve flap as recited in claim 38. In fact, Dragerwerk teaches away from such invention, as the ribs of Dragerwerk require a bridge structure not in connection with the valve closing body in the area of the bending axis of the valve closing body (Dragerwerk, translation, page 3, paragraph 2).

As there is neither motivation or suggestion to modify Dragerwerk to provide Applicants' claims, nor is every element of the claims taught by Dragerwerk, it is respectfully submitted that claims 3, 14, 19, and 40 are not *prima facie* obvious over Dragerwerk.

Furthermore, Braun fails to add that which is missing from Dragerwerk. Braun fails to teach or suggest a unidirectional valve and a respirator having a unidirectional valve including a valve flap wherein the valve flap thickness decreases when moving from the first end to the second end or from the second end to the first end, as recited in claims 1 and 18. Additionally, Braun fails to teach a valve flap having any ribs at all, much less ribs in continuous contact with the top surface of the valve flap, as recited in claim 34 and 38. It is asserted, therefore, that as the combination of Dragerwerk and Braun fails to teach every element of independent claims 1, 18, 34, and 38, the combination also fails to teach every element of claims 13-14, 19, and 40 dependent thereto.

In view of the above comments, Applicants respectfully submit that claims 3, 14, 19, and 40 are not *prima facie* obvious over Dragerwerk, and that claims 13-14, 19, and 40 are not *prima facie* obvious over Dragerwerk in view of Braun. Reconsideration and withdrawal of the rejections are respectfully requested.

Summary

It is respectfully submitted that the pending claims 1, 3, 7-11, and 13-21, and 34-56 are in condition for allowance and notification to that effect is respectfully requested.

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The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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07 AUGUST 2003
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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 7th day of August, 2003, at 12:14 p.m. (Central Time).

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